

LISA MICELI,

Plaintiff,

v.

KBRG OF STATESVILLE, LLC and,
KBRG HOLDINGS, INC.

Defendants.

Defendants' Motion to Dismiss and Plaintiff's counsel's Motion to Withdraw came on for hearing on February 7, 2011. Counsel for Defendant and Counsel for Plaintiff were present for the hearing. Lisa Miceli attended the hearing by telephone. Having considered the Motions, legal arguments presented by counsel, and after hearing from Plaintiff Lisa Miceli, the Court makes the following findings of fact and conclusions of law.

1. Throughout the proceedings leading to the trial of this dispute, Plaintiff was represented by Stephen A. Boyce and Defendants were represented by John R. Buric.
2. All the parties, through counsel, complied with the Court's Pretrial Discovery Scheduling Orders, timely submitting their fact stipulations, issues for trial, proposed jury instructions, witness lists and exhibit lists. Both parties were ready for trial. Jury selection was to commence on November 1, 2010, and trial to begin on the following day November 2, 2010.


3. On October 29, 2010, the parties, through counsel, concluded their settlement negotiations which resulted in the parties reaching an understanding to conclude all matters in dispute between them.
4. Plaintiff's counsel Stephen Boyce prepared the Settlement Agreement and on October 29, 2010, delivered it to Defendants' counsel John Buric. The Settlement agreement Plaintiff's counsel delivered was already executed by Ms. Miceli. Copies of the relevant correspondence and Settlement Agreement were attached to the Defendants' Motion to Dismiss as Exhibit A and are incorporated into this Order by reference.
5. Prior to November 12, 2010, Ms. Miceli represented to her counsel that she wanted to rescind the settlement agreement.
6. On November 12, 2010, Plaintiff's counsel filed a motion to withdraw as attorney of record on the grounds that the Plaintiff had lost confidence in him and insisted on a course of action contrary to his judgment and advice.
7. The Court made a substantial inquiry into Ms. Miceli's basis for wanting to rescind the agreement. Ms. Miceli did not present any evidence to support any legal basis to allow the settlement agreement to be rescinded.
8. It is the finding of this Court that the Settlement Agreement reached between the parties was an arms length transaction negotiated between them. Both parties were represented by counsel, who were competent to explain the terms and ramifications of settlement. Neither party induced the other to enter into the settlement agreement or agree to terms of settlement. Plaintiff could not establish that anyone induced her to sign the Settlement Agreement by fraud, misrepresentation, or any other improper conduct.

CONCLUSIONS OF LAW

1. The Settlement Agreement signed by the parties is an enforceable binding agreement to settle all disputes. Defendants have fully complied with the Settlement Agreement by the deadlines set forth in the Settlement Agreement.
2. Defendants' did not induce Ms. Miceli (or her counsel) to enter into the Settlement Agreement by making any fraudulent or negligent misrepresentations of fact. Moreover, there was no evidence presented to this Court to support any legal basis to rescind the Agreement.
3. No later than fourteen days after the entry of this Order, KBRG of Statesville, LLC, and KBRG Holdings, Inc. shall cause the delivery of the full settlement payment (\$10,000.00), in certified funds, payable to the order of Lisa Miceli. Said delivery shall be made to the office of Plaintiff's Counsel at 345 South Swing Road, Greensboro, North Carolina.
4. Defendants' counsel shall have an opportunity to present a Motion to the Court seeking costs and expenses associated with Prosecuting its Motion to Dismiss.

WHEREFORE, it is hereby ORDERED, ADJUDGED AND DECREED that Defendants' Motion to Dismiss (Document #94) shall be **GRANTED**. The motion to withdraw filed by Plaintiff's Counsel (Document #92) is **DENIED**.

Signed: February 25, 2011



Richard L. Voorhees
United States District Judge

